

EXHIBIT S

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

TREVOR FITZGIBBON,)
Plaintiff,)
vs.) Civil Action No. 3:19-cv-477-REP
JESSELYN A. RADACK,)
Defendant.)

AMENDED COUNTERCLAIM

Defendant/Counterclaim Plaintiff Jesselyn A. Radack ("Defendant" or "Radack"), by counsel, pursuant to Fed. R. Civ. Pro. 15(a)(1)(B) files the following Amended Counterclaim against Plaintiff/Counterclaim Defendant Trevor Fitzgibbon's ("Plaintiff" or "Fitzgibbon"), as follows:

PARTIES

1. Defendant/Counterclaim Plaintiff Jesselyn Radack is a resident of the District of Columbia.
2. Plaintiff/Counterclaim Defendant Trevor Fitzgibbon is a resident of North Carolina.

JURISDICTION AND VENUE

3. Radack disputes that this District has personal or subject matter jurisdiction over any of the claims raised in Fitzgibbon's Second Amended Complaint or the instant Counterclaim for the reasons set forth in Radack's Motions to Dismiss. *See* Dkt. Nos. 46, 48, 51¹

4. Radack disputes that venue in this District is proper for the reasons set forth in Radack's Motion to Dismiss. *See* Dkt. Nos. 46, 48.

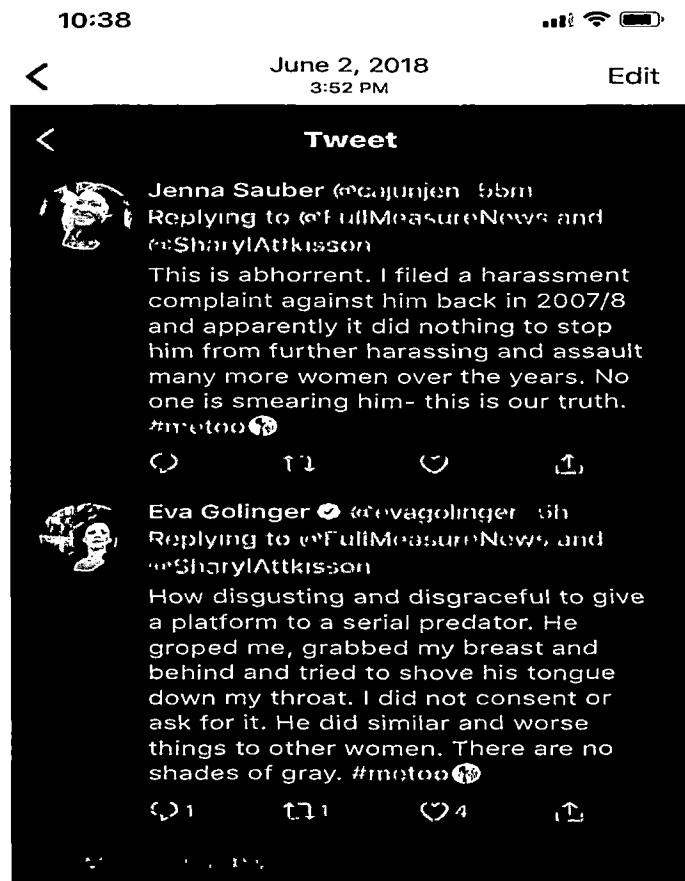
COUNT I – Breach of Contract

5. On April 13, 2018, Fitzgibbon commenced an action against Radack in the United States District Court for the Eastern District of Virginia (Case No. 3:18-cv-247-REP) (the "First Radack Action"). In the First Radack Action, Fitzgibbon alleged causes of action for malicious prosecution, defamation, insulting words, abuse of process, and conspiracy. Fitzgibbons claim's stem from the fact that in 2016 Radack, along with two other women, made police reports against Fitzgibbon for sexual assault.

6. In the past, a half dozen or more different women have also accused Fitzgibbon of sexual misconduct. *See* "The Disturbing Story of Widespread Sexual Assault Allegations at a Major Progressive PR Firm." Huffington Post, https://www.huffingtonpost.com/entry/fitzgibbon-mmedia_us_567330fce4b014efe0d4cb4e *See Exhibit A* attached hereto. The article quotes a joint statement from former Fitzgibbon Media staffers which "reported over a half dozen incidents of sexual harassment and at least two involving sexual assault committed by Trevor FitzGibbon against his own employees." *Id.* The article goes on to describe that this was not the first time Fitzgibbon faced accusations of inappropriate workplace behavior, as he was previously

¹ In an abundance of caution, Radack files the instant Amended Counterclaim to preserve her right to assert claims against Fitzgibbon should the Court decide that jurisdiction does exist within the Eastern District of Virginia.

disciplined by his prior employer, Fenton Communications, amid accusations from female colleagues of sexual harassment. *Id.*



1. Sexual misconduct accusations by other women against Fitzgibbon have also appeared on social media:

See also Tweet by @skinnyedmundo comparing Fitzgibbon to Roger Ailes:



Caren Benjamin (@skinnyedmundo)

5/19/17, 10:30 AM
RIPurgatory, Roger. #TrevorFitzgibbon proudly carrying on your tradition bit.ly/2qBj9gu
twitter.com/NYDailyNews/st...

2. Despite the prevalence of reports by numerous women regarding Fitzgibbon's ongoing sexual misconduct, he has repeatedly singled out Radack as someone attempting to smear his already tarnished reputation.

History of Fitzgibbon's Retaliatory Smear Campaign Directed Towards Radack

3. Due to a long history of sexual assault allegations lodged against Fitzgibbon, in 2017 Fitzgibbon co-founded a business called ShadowBox Strategies ("ShadowBox"). ShadowBox was run by Fitzgibbon, along with his co-conspirators Manuel "Defango" Chavez III and Thomas Schoenberger ("Schoenberger"). ShadowBox has described its mission as follows:

THIS IS WAR

Shadowbox is your army. We solve your problems and expose truth. We unleash a multifaceted, **strategic battle plan** through integrated research earned media, legal and digital chaos.

Where your enemies have lied to paint you as the bad guy, we sow the seeds of doubt and present the counter-narrative that they are, in fact, the villains, and you have been unjustly accused. We do this through **sophisticated use of internet technology, meme creation, PR, and cyber-guerrilla tactics** that stop the bleeding and begin to sway public opinion and the media in your favor.

WHAT WE DO

Shadowbox designs crisis management/ counterinsurgencies to debunk and hit back at malicious and defamatory online and media attacks on our clients.....Our operations unit effectively routs adversaries away from you, **sending them to chase phantoms and rendering them exhausted and perplexed....”**

<https://trackingmeroz.wordpress.com/tag/thomas-schoenberger/>

4. Fitzgibbon befriended a woman by the name of Beth Bogaerts (“Bogaerts”) to assist with furthering the mission of ShadowBox. However, ShadowBox was only ever able to recruit two clients and eventually the company was dissolved. Notwithstanding, Fitzgibbon convinced Bogaerts that Radack was a mole for the government, that Radack had falsely accused Fitzgibbon of rape, and recruited her to assist him in his efforts to threaten, harass, and retaliate against Radack through social media.

5. Fitzgibbon directed Bogaerts to tweet phrases such as “tick tock” at Radack for the sole purpose of intimidating and harassing Radack on social media. Fitzgibbon also instructed Bogaerts to conduct research about Radack to assist him in his efforts to smear and sabotage Radack.

6. Fitzgibbon and Bogaerts engaged in numerous discussions regarding ways to harass Radack, which include but are not limited to, the following:

a. Conversation wherein Fitzgibbon asked Bogaerts to look at Radack’s Facebook page because he was blocked and then replied, “it seriously makes me wonder . . . if I’m really evil”:



b. Conversation between Bogaerts and Fitzgibbon, wherein Fitzgibbon discusses making an alternative account not attributed to him to post Radack's private text messages calling it "the setup":



c. Email from Fitzgibbon to Schoenberger regarding a plan to have Bogaerts reach out to a journalist who had previously done a story on Radack, to write another story about Radack:

< 1 > ^ v

From: VoxVeritas
<VoxVeritas@protonmail.com>
Date: Fri, Jul 14, 2017 at 3:55 PM
Subject: the reporter for Mother Jones
Radack profile is Laurie Abraham
To: Th Stg <tstger13@gmail.com>
Cc: Kryptos Journal
<lethargiclemur@gmail.com>, Manny
Chavez <manny@fyresite.com>

**i wonder if we should see if
Beth would be willing to
reach out/ to send her an
email about what Radack
has done, rather than one of
us. A woman will be more
credible/powerful making
the appeal - Abraham wrote
the Mother Jones profile on
Radack**

Flag File Delete Back Forward

7. The foregoing communications illustrate Fitzgibbon's long-standing obsession with stalking and harassing Radack.

8. Bogaerts eventually informed Fitzgibbon that she no longer wanted to be involved with his campaign against Radack because it became clear that Fitzgibbon's obsession with smearing Radack was beyond the pale and/or possibly illegal.

Fitzgibbon's Continued Harassment of Radack Post-Settlement of the First Radack Action

9. On April 9, 2019, the parties entered into a settlement agreement (the "Settlement Agreement") whereby Fitzgibbon agreed that:

- a. He would not tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube or any other social media platform, or any other print or media outlet, that mentions Radack or that is of and concerning Radack;
- b. He would not direct, request, encourage, entice, procure or otherwise cause any third party, including but not limited to any friends, colleagues, or clients of the other to tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube, any other social media platform, or any print or media outlet, that mentions Radack or that is of and concerning Radack.;
- c. He agreed to refrain from publishing, making, printing or communicating, electronically, orally, in writing, or in any other manner, to any third party (excluding family members) or to the print or broadcast media, within social media of any nature, or on the Internet, any disparaging comments or words that could cause or contribute to such Party being held in disrepute by the public.

See Exhibit B attached hereto, Paragraphs 4(a)-(c).

10. In consideration of the foregoing agreement by Fitzgibbon to stop his defamatory crusade against Radack, Fitzgibbon was paid \$101,541.56.

11. Not surprisingly, and in clear violation of the Settlement Agreement, Fitzgibbon has continued in his crusade to retaliate against, tarnish, defame, embarrass, and humiliate Radack through posting, and directing others to post on social media and other media outlets, statements of and concerning Radack. Fitzgibbon's actions include, without limitation, the following:

- a. Upon information and belief, approximately one month after the Settlement Agreement was entered to, Fitzgibbon instructed his long-time friend and journalist, Lara Logan, to post the following false and defamatory language on Twitter alongside Radack's Twitter handle and profile picture on May 3, 2019: "[She] took everything from [Fitzgibbon]—his reputation, his home, his ability

to provide for his family. As a victim of gang-rape and sodomy, I say firmly that I stand by every victim of rape and sexual assault—the ones who do not lie.”

b. Upon information and belief, on or about May 8, 2019, Fitzgibbon instructed Lara Logan, to post the following false and defamatory information on Twitter which is of and concerning Radack:

7:43



I say firmly that I stand by every victim of rape and sexual assault - the ones who do not lie.

4

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335



Lara Logan @lara_j_logan 4d Who has the courage to stand up for the real victims of rape by protecting them from those who exploit this terrible crime and use it to deceive and destroy? I know Trevor and his family. What they've endured is unimaginable. This is a big day. There is only one truth.



unRABAGKted
@JesselynRadack

Follow

Since April 2018, I have been involved in litigation with Trevor Fitzgibbon. We have



Lara Logan @lara_j_logan · 1d ▾
 And as he co-parents, back and forth from city to city, he has fought back. What of the woman, an attorney, who falsely accused him? She was just held in CONTEMPT OF COURT according to public records. .@SharylAttkisson [pacermonitor.com/case/24217627/...](http://pacermonitor.com/case/24217627/)

Neither contriti Document 97 Filed 04/26/19 Page 3 of 5 PageID

financial difficultie are from the pleadings in this case
 sort by any litigant, ; the Amended Complaint (ECF No. 12);
 shows that Radack is and other papers in the case) that Radack
 user of social media. at a lawyer knowingly would violate an C
 Neither contrition her from engaging in certain conduct :
 financial distress ha ter which cannot be excused by contri
 for nasty social medi or financial distress. The simple fac
 mations that she admittedly made.
 ntempt of the ORDER (ECF No. 41).

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↑

c. Upon information and belief, on or about June 1, 2019, Fitzgibbon instructed his close friend Michael J Daugherty, to post the following on Twitter which is of and concerning Radack:



d. On June 13, 2018, while the First Radack Action was pending, Fitzgibbon appeared on the show Full Measure with Sharyl Attkisson which has a

viewership of approximately 700,000 or more. On the show Fitzgibbon made numerous false and defamatory statements including that all sexual conduct between himself and Radack was 100% consensual, statements implying that Radack sent him text messages on December 8th after she was raped which indicate that she was “happy,” and statements implying that Radack’s allegedly false sexual assault claims have caused him to be vilified and lose his home and business.²

<https://www.youtube.com/watch?v=JL8U3G8pKiQ>; <https://www.prnewswire.com/news-releases/ratings-for-full-measure-with-sharyl-attkisson-grow-by-76-regularly-beating-cable-news-programs-on-sunday-mornings-300390182.html>

After the settlement of the First Radack Action occurred, Fitzgibbon provided Sharyl Attkisson with information regarding the settlement which was published in the following article on June 29, 2019. The article falsely implies that Radack fabricated criminal allegations against Fitzgibbon for sexual assault. <https://sharylattkisson.com/2019/06/smearing-wikileaks/> See **Exhibit C** attached hereto.

- e. Upon information and belief, on July 11, 2019 and December 30, 2019, Fitzgibbon instructed his confederate, and business partner in Shadowbox, Manuel “Defango” Chavez III to post the following false and defamatory information on Twitter which is of and concerning Radack:

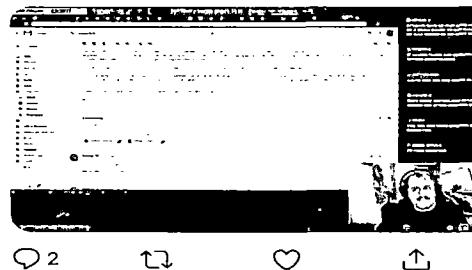
² Fitzgibbon also provided to Full Measure semi-clothed pictures of Radack, as well as pictures of Radack wearing lingerie, which were featured on the show. Fitzgibbon’s continuous and blatant attempts to disseminate these pictures to the public serve no other purpose but to harass, intimidate, and humiliate Radack for reporting to the police that she was sexually assaulted by Fitzgibbon.



Lestat @Tafoyovsky · 17h

lol!~

#Defango is pointing the finger
(as the DNC Leaker) at the
Woman that accused his BFF
(Trevor Fitzgibbon) of rape.
Nice...



 Danger Zone · 3,949 Tweets

[Tweets](#) [Tweets & replies](#) [Media](#) [Likes](#)

 [Danger Zone Retweeted](#)
unR-A-D-A-C-Kted @Jesse... · 5h
Replying to @il1usiveman
@Sharkbellykelly and 48 others
What case have I "lost due to lies"?
Q? RT? 3 1

 Danger Zone @il1usiveman · 4h
Replying to @JesselynRadack
@Sharkbellykelly and 48 others
Currently the one with Trevor right?
You had to settle then broke the
agreement incurring a fine.
Q? RT? 2 1

f. On or about August 1, 2019, @TFawnstaff (an account which upon information and belief is controlled by Fitzgibbon but recently deactivated), posted the following false and defamatory information on Twitter which is of and concerning Radack:

Tillie Fawnstaff
@Tfawnstaff

Once upon a time, I was born
Joined July 2019

2 Following 0 Followers
Not followed by anyone you're following

[Tweets](#) [Tweets & replies](#) [Media](#) [Likes](#)

unRADACKted @Jess... 9h
A must-listen for those stalked, harassed or trolled by patho-parasitic frauds masquerading as victims:
podcasts.apple.com/us/podcast/the... podcasts.apple.com/us/podcast/the...

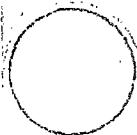
Tillie Fawnstaff @Tfawn... 2h
Ms. Radack, you signed a legally binding agreement to stop writing about this person. You withdrew your false accusation of him. And still - you write about him nearly every.single.day. So who is stalking whom? And who is the patho-parasitic narcissist?

Tillie Fawnstaff 6 Tweets

[Tweets](#) [Tweets & replies](#) [Media](#) [Likes](#)

Tillie Fawnstaff @Tfawn... 2h
Ms. Radack, you signed a legally binding agreement to stop writing about this person. You withdrew your false accusation of him. And still - you write about him nearly every.single.day. So who is stalking whom? And who is the patho-parasitic narcissist?

Tillie Fawnstaff @Tfawn... 18h
Replies to @cagoldberglaw @JesselynRadack and 4 others
There's a difference between a "retaliation defamation lawsuit by a rapist" versus Radack, who tweets on a daily basis, after withdrawing her accusation, having signed a legally binding agreement to stop her online

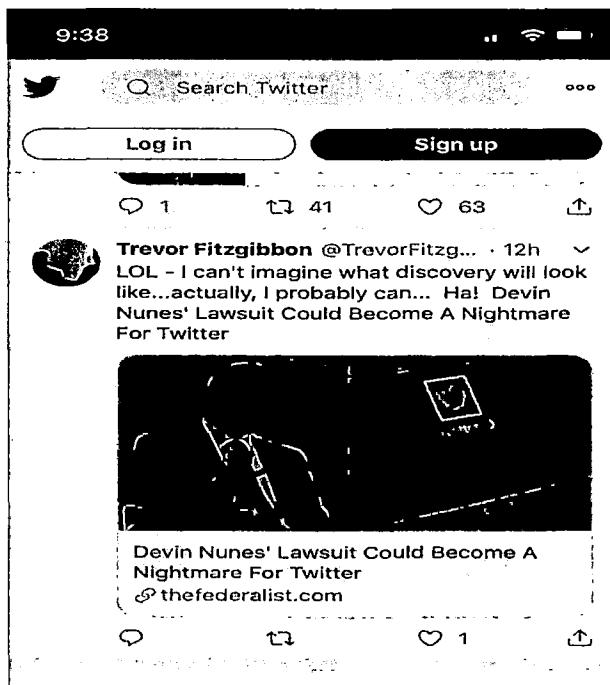


@tfawnstaff

This account doesn't exist

Try searching for another.

g. On or about October 10, 2019, Fitzgibbon posted the following on Twitter, which contains comments of and concerning the First Radack Action and the pending lawsuit against Radack:



h. While the First Radack Action was pending, Fitzgibbon created a Wikipedia entry for himself discussing the pending lawsuit. After the First Radack Action was settled, Fitzgibbon republished false and defamatory information of and concerning Radack on en.everybodywiki.com—which bills itself as “the free wiki where everybody can write their own biography.” The last edit to Fitzgibbon’s page was made on December 29, 2019, and it has been accessed 1,586 times.

https://en.everybodywiki.com/Trevor_Scott_FitzGibbon See **Exhibit D** attached hereto.

i. In a blatant attempt to bait Radack, Fitzgibbon tagged Radack’s former client, John Kiriakou, and current client Edward Snowden, in the following post:

9:45

October 14 9:41 AM Edit

Top Latest People Photos Videos

trained by the CIA and who never actually received a single vote?

 Trevor Fitzgibbon @Trev... 12h So this certainly explains quite a bit... [@raymcgovern](#) [@JohnKiriakou](#) [@Snowden](#) [#Whistleblower](#)



CIA, FBI computers used for Wikipedia edits
reuters.com

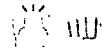
 Trevor Fitzgibbon @Trev... 13h Stop the Execution of Rodney Reed! Sign the Petition!

j. On December 19, 2019, Fitzgibbon continued his provocations by tagging two of Radack's former clients, Bill Binney and John Kiriakou, and her close friend Daniel Ellsberg, in the following post:

 **Trevor Fitzgibbon**
@TrevorFitzgibb1

Replies to @TrevorFitzgibb1 @BellaMagnani and 3 others

A huge THANK you to
@DanielEllsberg @JohnKiriakou
@raymcgovern #BillBinney and all
who signed - and especially
#SimonFloth who organized this



11:44 AM · Dec 18, 2019 · Twitter for iPhone

k. Upon information and belief, Fitzgibbon authored and prompted his media contacts to publish the following article which is false and defamatory and of and concerning Radack: <https://rixstep.com/1/20190529,00.shtml> See Exhibit E attached hereto.

l. On January 16, 2020, Fitzgibbon published the following statement regarding his pending lawsuit against Radack, which is of and concerning Radack:

 **Trevor Fitzgibbon**
@TrevorFitzgibb1

I trust most are smart enough to understand my silence on certain matters while in the midst of litigation to defend myself. There will be a time and a place...

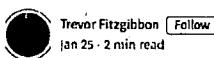
Thank you for any and all support you have shown.

#FreeAssange #Truth #WikiLeaks

10:11 AM · Jan 16, 2020 · Twitter Web App

m. On January 25, 2020, Fitzgibbon authored the following statement which was published on medium.com which discusses Radack's sexual assault allegations against him and Fitzgibbon's erroneous belief that Radack has "helped to facilitate an orchestrated and global smear campaign" against him. The statement below is unequivocally "of and concerning" Radack and defamatory in nature:

1/29/2020 A Statement - Trevor Fitzgibbon - Medium



A Statement

I have spent the majority of my adult life working to oppose war, genocide, and supporting courageous whistleblowers. In 2002 I left my job as an environmental organizer to help lead the national PR effort to push back against the Bush administration in the run-up to the war in Iraq. In 2007 I worked with active-duty American soldiers who called for a withdrawal of troops in Iraq—an effort featured on 60 Minutes. In 2011, my firm launched and ran the Bradley Manning Advocacy Fund at a time when Manning was held in quasi solitary confinement and being stripped naked at nights in front of other prisoners. The effort helped lead to the dismissal of PJ Crowley, Secretary Clinton's long-standing spokesman, after he had been recorded claiming that the military's treatment of Manning was "stupid and counterproductive."

My clients included Julian Assange's Legal Defense Fund, PR support for Edward Snowden's initial disclosures, and the governments of Venezuela and Ecuador (before they sold out JA).

In 2015 I was falsely accused of crimes that, if convicted, could have put me in prison for life. While the US Attorney dropped all charges and closed its investigation, the woman who falsely accused me of the worst offense has helped to facilitate an orchestrated and global smear campaign with her co-conspirators that continues to this day. I am defamed daily. Even after the woman's retraction of her false allegations and being held in contempt of court by a federal judge, she and her co-conspirators continue the defamation.

My attorney, whose mentor was CIA whistleblower, Sam Adams (Sam Adams Awards for Integrity), is litigating to expose those responsible. Any and all actions taken are when and where irrefutable evidence exists of an individual's participation in the almost four-year smear operation.

To my critics who believe that my actions are unwarranted, I kindly suggest they may feel differently if they found themselves as the target.

Thank you.

Trevor S. FitzGibbon

January 25, 2020

n. On January 25, 2020, Fitzgibbon responded to a comment made by @CaressiaBlair referencing the aforementioned statement Fitzgibbon made on Medium.com which is of and concerning Radack:



Trevor Fitzgibbon @TrevorFitzgibb1 · Jan 25
"A Statement" by @TrevorFitzgibb1

A Statement
I have spent the majority of my adult life working to oppose war, genocide, and supporting courageous ... link.medium.com

5 9 9

Caressia Blair @CaressiaBlair · Jan 25
I'm sorry you're going through this Trevor.

1

Trevor Fitzgibbon
@TrevorFitzgibb1

Replies to @CaressiaBlair

Everything's fine. :) Far more imp people experience far worse. Main thing is to do what my friend in London told me to do: #SeekJustice

5:00 PM · Jan 25, 2020 · Twitter for iPhone

o. Upon information and belief, on January 27, 2020, "@larpwars" at the direction of Fitzgibbon posted the following information on Twitter indicating that he had prior knowledge of the subpoenas issued by Fitzgibbon in the pending lawsuit (this indicates that Fitzgibbon is discussing the current claims against Radack with third parties), he then goes on to make false and defamatory statements which are of and concerning Radack:



LARPWARS @larpwars · Jan 27

I knew about the subpoenas coming down the road so I made sure @JesselynRadack and they rest of the liar squad had ample time to put down their lies. Now they get to be out in the open. #winning

p. On January 29, 2020, Fitzgibbon posted the following tweet which, although does not mention Radack by name, is of and concerning Radack when read in context with the prior tweets he has made, most significantly the statement he published just four days prior, *see ¶ 17(m)*, wherein he talks about being “falsely accused” and the pending litigation with Radack:



The superpower of the accused

“Surely it is a shock and a devastation to find one transformed into a demon...
 No, it's wonderful because it is not that you change, it is that others change. You stay the same but you now have a gift.
 You now have a superpower. The superpower of the accused. This superpower is to reveal the true characters of others. Who does not long from childhood for such a superpower to understand the true nature of one's friends? We are not traduced - we the accused - but the people and States around us are. Great characters rise and great cultures step forward to shine. False smiles fade, concealed alliances are revealed. The timid retreat and love is no longer merely a word but it is an action. This is the superpower of the accused...”

Excerpt of Julian Assange speech,
 DiEM25, 25 June 2016 (from 45:45)
<https://youtu.be/GBROVlnhFWc>

12:26 AM · Jan 29, 2020 · Twitter Web App

q. Fitzgibbon has engaged in an active campaign to bait, troll, and defame Radack on social media through confederates, proxies, and “alt” accounts, including but not limited to: @scottg21605048, @uno01112020, @fitzgibbon_s, @ReconnectJ, @ScottAldrich10, @TomeeHiro, @WL_Guard, @silentpartnerio, @jacksock7, @sonicyouthy, @vivaprivacidad, @thiagoTomi, @spontaneousCom3, @laralogan, @SharylAttkisson, @Suzi3d, @ElizabethleaVos, @CassandraRules, @Angel_Fox_Today, @DeCespedes, @ventuckyfspaz, @TrevorFirzgibbon, @TFawnstaff, @FauxWatch, @EvieWarner2, @True78045100, @Vice16176094, and @RADACKwatch which has the tagline “Whistleblowing on Jesselyn Radack.”

12. The Settlement Agreement entered into between Radack and Fitzgibbon, contains the following liquidated damages clause:

The Parties acknowledge and agree that a material breach of the provisions of this paragraph 4 would result in significant damage to the non-breaching Party. The Parties hereby acknowledge and agree that the amount of damages in the event of a material breach of the provisions of this paragraph 4 would be difficult or impossible to determine and that the amount \$1,000 for each tweet, retweet, reply, like, post or comment that violates paragraphs 4(a), 4(b)[sic] or 4(c) is the best and most accurate estimate of the damages the non-breaching Party would suffer in the event of a material breach of this paragraph 4, that such estimate is reasonable under the circumstances existing as of the date of this Agreement and under the circumstances that the Parties reasonably anticipate would exist at the time of such breach and that the breaching Party agrees to pay the non-breaching Party that amount as liquidated damages, and not as a penalty, if the non-breaching Party asserts, and a court of competent jurisdiction confirms, such a material breach. The burden of proof in any action alleging a breach of this paragraph 4 shall be proof by clear and convincing evidence.

See Exhibit A, Paragraph ¶ 4(e).

13. As a result of Fitzgibbon's numerous breaches of the Settlement Agreement, Radack has suffered and is entitled to liquidated damages in an amount to be proven at trial, plus attorney's fees and costs.³

COUNT II – Defamation (In the Alternative)

14. Radack restates and re-alleges herein all of her answers to Plaintiff's allegations in the Second Amended Complaint, all of her Affirmative Defenses, and the allegations in the Counterclaim asserted above as if set forth fully herein.

15. It is Radack's position that the liquidated damages provided for in the Settlement Agreement are the sole, and exclusive, remedy for breaches described in Paragraphs 4(a)-(c) of the Settlement Agreement, therefore damages should be capped at \$1,000 per violation. However, should the Court find that this is not the exclusive remedy, Radack pleads the instant Defamation claim.

16. By his conduct as alleged above, Fitzgibbon has, without a privilege to do so, maliciously published and communicated to third parties false and defamatory material of and concerning Radack that ridicules Radack, treats Radack with contempt, and which attempts to discredit Radack in the minds of her family, friends, colleagues, clients, and associates.

17. Fitzgibbon's defamatory statements and, upon information and belief those Fitzgibbon directed others to make on his behalf, taken as a whole, are defamatory *per se*. Fitzgibbon knew or should have known that these false and defamatory statements would be republished over and over by third-parties to Radack's detriment and injury. Republication was

³ If the liquidated damages provision in the Settlement Agreement is determined to be unenforceable for any reason, or if it is determined that the liquidated damages clause does not limit the amount of damages a party can be awarded for breach of the Settlement Agreement, then Radack seeks any and all actual and consequential damages she has suffered in an amount to be determined at trial.

the natural and probable consequence of Fitzgibbon's actions and was actually and/or presumptively authorized by Fitzgibbon. Fitzgibbon is liable for the republication of the false and defamatory statements by third-parties.

18. Fitzgibbon's false statements, and those he directed to be made, impute to Radack the commission of felonies and crimes involving moral turpitude. Fitzgibbon's false and defamatory statements also impute to Radack an unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment.

19. Fitzgibbon made the false statements, or directed the false statements to be made, with actual or constructive knowledge that they were false or with reckless disregard for whether they were false. Fitzgibbon acted with actual malice and reckless disregard for the truth. Fitzgibbon lacked reasonable ground for any belief in the truth of his statements.

20. Fitzgibbon's acts of defamation have caused Radack to suffer irreparable harm and injury. As a result of Fitzgibbon's defamatory statements, Radack has suffered compensatory damages in an amount to be proven at trial. Due to the wanton, willful, and malicious nature of Fitzgibbon's conduct Radack is also entitled to an award of punitive damages in an amount to be proven at trial.

COUNT III – Fraudulent Inducement (In the Alternative)

21. Radack restates and re-alleges herein all of her answers to Plaintiff's allegations in the Second Amended Complaint, all of her Affirmative Defenses, and the allegations in the Counterclaim asserted above as if set forth fully herein.

22. It is Radack's position that the liquidated damages provided in the Settlement Agreement is the sole, and exclusive, remedy for breaches of the Settlement Agreement described

in Paragraphs 4(a)-(c) of the Settlement Agreement, therefore damages should be capped at \$1,000 per violation. However, should the Court find that this is not the exclusive remedy, Radack pleads the instant Fraudulent Inducement claim.

23. Radack relied upon Fitzgibbon's representations that he would discontinue his crusade to retaliate against, tarnish, defame, embarrass, and humiliate Radack through posting, and directing others to post on social media and other media outlets, statements of and concerning Radack. In reliance upon Fitzgibbon's agreement to "bury the hatchet" Radack caused \$101,541.56 to be paid to Fitzgibbon, she also dismissed her Counterclaim in the First Radack Action, dismissed her pending bankruptcy case, and settled all claims with Fitzgibbon. Radack was induced by Fitzgibbon's misrepresentations and deceit to enter into the Settlement Agreement.

24. Fitzgibbon's representations were false at the time they were made. His actions, and those of his confederates, which occurred promptly after the Settlement Agreement was entered into, demonstrate that he had no present intention to comply with the terms of the Settlement Agreement. At the time Fitzgibbon entered into the Settlement Agreement, it is clear he intended to continue to harass, bait, and dox Radack.

25. As a result of Fitzgibbon's fraudulent inducement, Radack has suffered compensatory damages, including, without limitation, \$101,541.56, loss of viable claims, attorney's fees, court costs, and other damages in an amount to be proven at trial.

WHEREFORE, Defendant/Counterclaim Plaintiff Jesselyn Radack respectfully requests that this Court enter judgment in her favor, and against the Plaintiff/Counterclaim Defendant Trevor Fitzgibbon in an amount to be proven at trial to include, without limitation, compensatory damages, punitive damages, pre-judgment and post-judgment interest, attorney's fees, costs, and such other and further relief as the Court deems proper.

TRIAL BY JURY IS DEMANDED

Dated this 3rd day of January, 2020

/s/ D. Margeaux Thomas
D. Margeaux Thomas (VSB #75582)
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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2020, a copy of the foregoing document was filed with the Court electronically. Notice of this filing will be sent automatically by the Court's CM/ECF system to the following parties:

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Charlottesville, VA 22903
Counsel for Plaintiff

/s/ D. Margeaux Thomas
D. Margeaux Thomas (VSB #75582)